

## Message Text

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ACTION L-03

INFO OCT-01 IO-10 ISO-00 AF-06 ARA-10 EA-09 EUR-12 NEA-10

CIAE-00 DODE-00 PM-04 H-02 INR-07 NSAE-00 NSC-05

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TO SECSTATE WASHDC 3438

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E.O. 11652: N/A

TAGS: UN, PFOR, ILC

SUBJ: UNGA LEGAL COMITE: DIPLOMATIC ASYLUM (DA)

SUMMARY: DEBATE BEGAN OCT 29 ON SUBJECT ITEM. AUSTRALIAN DEL (LAUTERPACHT) OPENED DEBATE WITH STATEMENT (FULL TEXT POUCHED L/UNA-MATHESON) EMPHASIZING HUMANITARIAN NATURE OF DA, ITS UTILITY IN PAST CRISES, AND EXPRESSION OF HOPE THAT STATES WILL GIVE THOUGHT TO DA WITH IDEA THAT, GRADUALLY, AN ENUMERATION OF PRINCIPLES ON DA MAY BE AGREE UPON. PARAGUAY, BULGARIA, ITALY, JORDAN AND ARGENTINA ALSO SPOKE ON SUBJECT. END SUMMARY.

1. AUSTRALIAN DEL (LAUTERPACHT) BEGAN BY THANKING SECRETARIAT FOR INVALUABLE REPORT IT PREPARED ON SUBJECT (A/10139 -- PARTS I AND II), AND GOVERNMENTS WHICH SUBMITTED COMMENTS ON DA. HE EMPHASIZED AUSTRALIAN PERSPECTIVE OF DA AS HUMANITARIAN PRACTICE WITH GREAT USEFULNESS FOR THOSE IN DISTRESS AS A RESULT OF POLITICAL OFFENSES. ACKNOWLEDGING THAT GRANTING DA CAN BE CONSIDERED ENCROACHMENT ON SOVEREIGNTY OF RECEIVING STATE, HE STATED THAT STATES HAVE IN PAST AGREED TO LIMIT THEIR SOVEREIGNTY, AND CONCORDANCE OF STATES TO ESTABLISH DA PRACTICE UNDER AEGIS OF INTERNATIONAL LAW WOULD ELIMINATE THIS PROBLEM.

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2. LAUTERPACHT STATED THAT DA DID NOT CONSTITUTE SOLELY LATIN AMERICAN PRACTICE SINCE NON-LATIN STATES HAVE EMPLOYED DA IN LATIN AMERICAN COUNTRIES, AND SINCE SEVEN NON-LATIN STATES GRANTED DA IN SPAIN DURING ITS CIVIL WAR. HE SAID THAT LEGAL BASIS FOR LATINS' GRANT OF DA COULD BE SEEN TO BE THE INTERNATIONAL CONVENTIONS ENTERED INTO BY LATINS, BUT STATED THAT WHEN DA IS GRANTED BY NON-LATIN STATES (WHICH ARE NOT PARTIES TO ANY DA CONVENTION) ITS LEGAL BASIS MUST EITHER LIE IN CUSTOMARY INTERNATIONAL LAW (WHICH HE ADMITTED WAS DISPUTED PROPOSITION) OR SIMPLY ON THE TOLERANCE OF THE RECEIVING STATE. HE SUGGESTED THAT THIS AMBIGUITY IN ITS LEGAL BASIS ARGUED FOR THE CODIFICATION BY THE INTERNATIONAL COMMUNITY OF PRESCRIBED STANDARDS.

3. LAUTERPACHT STATED AUSTRALIA, AT 29TH GA, INSCRIBED THIS ITEM WITH THE AIM OF CODIFICATION OF PRINCIPLES ON DA IN ORDER TO PRESERVE ITS UTILITY. SINCE THEN AUSTRALIA HAS NOTED THAT NOT ALL OF THOSE WHO SUPPORTED DISCUSSION OF DA FAVOR CODIFICATION. AUSTRALIA ALSO HAD OBJECTIVE OF ENCOURAGING MEMBERS OF THE GA TO GIVE THOUGHT TO ACCEPTING IDEA OF DA AND NOT RPT NOT OF FORCING DELS TO SPEAK IN HARDENED TERMS AGAINST IT. IN THIS REGARD AUSTRALIA HOPED THAT GOVERNMENTS WOULD CONSIDER POSSIBILITY OF TAKING UNILATERAL ACTION AFFIRMING THEIR ADHERENCE TO CONCEPT OF DA, AND THAT DELS IN LEGAL COMITE WOULD NOT FEEL CONSTRAINED TO SPEAK HARSHLY ABOUT DA IN CURRENT DEBATE. IN CLOSING, HE RECALLED THAT DA IS STILL ON ILC AGENDA, AND HOPED THAT IF GA DOES NO MORE WITH DA, ILC WILL REMEMBER THAT DA AWAITS ITS ATTENTION.

4. BULGARIAN DEL SPOKE WELL OF DA AS A HUMANITARIAN DEVICE OF LATIN AMERICAN REGION WHICH HAS BEEN EXERCISED LARGELY OUTSIDE A LEGAL REGIME AND WHICH "NO DOUBT" WOULD BE GRANTED IN URGENT AND EXTREME CASES. HOWEVER, HE STATED PRACTICE OF STATES LEADS US TO CONCLUSION IT IS NOT PRINCIPLE OF INTERNATIONAL LAW. HE FOUND THAT DA INVOLVES DEROGATION OF STATE SOVEREIGNTY, INTERFERENCE IN INTERNAL AFFAIRS OF A STATE, AND CONFLICTS WITH ARTICLE 41.1 OF VIENNA CONVENTION ON DIPLOMATIC RELATIONS AND ARTICLE 55.2 OF VIENNA CONVENTION ON CONSULAR RELATIONS, WHICH, RESPEC-

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TIVELY, DEAL WITH PREMISES OF DIPLOMATIC AND CONSULAR MISSIONS.

5. ITALIAN DEL STATED BASIS FOR GRANTING DA, COMPELLING HUMANITARIAN NEED, REMAINS SO VAGUE AS TO DEFY LEGAL CODIFICATION. ITALY BELIEVED THAT DA SHOULD BE GRANTED IN COMPELLING HUMANITARIAN CIRCUMSTANCES, BUT BELIEVED THIS SHOULD BE DONE ON CASE-BY-CASE BASIS AND THAT A CONVENTION ON SUBJECT WOULD NOT BE APPROPRIATE. ITALY VELIEVED GA

DISCUSSION OF DA HAD BEEN USEFUL, AND SUFFICIENT. ARGUING IT WAS NO LONGER NECESSARY FOR GA TO DISCUSS MATTER HE ACKNOWLEDGED IT MIGHT BE APPROPRIATE TO REITERATE REQUESTS TO GOVERNMENTS TO COMMENT ON THE ISSUE.

6. ARGENTINE DEL (GOBBI) SPOKE TO QUESTION OF LEGAL BASIS OF DA. ITS PAST LEGAL BASIS, EXTRATERRITORIALITY, WAS A FICTION NO LONGER ACCEPTED. TODAY IT WAS BASED ON INTERNATIONAL CONVENTIONS (IN LATIN AMERICA) AND THE LOCAL LAW OF (LATIN) STATES. THUS HE ARGUED THERE WAS NO INTERVENTION IN INTERNAL AFFAIRS SINCE THE STATE AFFECTED REGULATED ITS OWN SOVEREIGNTY. HE WAS AMAZED WITH THEORY THAT DA SHOULD BE EMPLOYED WITHOUT ESTABLISHING A LEGAL BASIS. HE CONSIDERED THE LATTER A VIOLATION OF THE VIENNA DIPLOMATIC AND CONSULAR CONVENTIONS. THUS ARGENTINA FAVORED CONTINUED STUDY OF DA WHICH HE SAID, HAS NOT YET BEEN ADEQUATELY CODIFIED ON AN INTERNATIONAL BASIS.  
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